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IN THE HIGH COURT OF DELHI

Judgment reserved on : March 12, 2009

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Judgment delivered on : March 18, 2009

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CRL.REF. 01/2008

DR.R.K.SANGWAN & ANR. Appellants
Through: Mr.Dharam Raj Ohlan, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate and
Ms.Richa Kapoor, Advocate and

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. While dealing with Bail Application No.1514/2007, a learned Single Judge of this Court has made a reference to a larger Bench on the question, whether the bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") operates as a complete bar to the maintainability of

petitions/applications under Section 438 of the Code of Criminal Procedure 1973.

2. Section 18 of the Act read as under:-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.– Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

3. Since we are in complete agreement with the view taken by a Full Bench of the Rajasthan High Court reported as 2000 CrL.J. 2899 Virender Singh vs. State of Rajasthan, in which decision various authorities on the subject have been noted, we propose to pen a short decision for the reason the Full Bench of the Rajasthan High Court has extensively dealt with the issue and in our opinion on sound reasoning; which we adopt.

4. The Parliament, in its wisdom has evinced great concern and anxiety with respect to the unabated atrocities going on against members of the scheduled castes and scheduled tribes. The legislative mandate oozes through Section 18 of the said Act which disables an accused from obtaining anticipatory bail under Section 438 of the Code of Criminal Procedure 1973.

5. As the saying goes: *the disease growing up desperately must be treated desperately else no*. Atrocities against members of the scheduled castes and scheduled tribes are unabatedly going on since last hundreds of years and thus there cannot be two views about the strictest possible view pertaining to matters involving atrocities on the members of the scheduled castes and scheduled tribes.

6. But, a beneficial legislation can never be permitted to be abused and converted into an instrument to blackmail and wreck personal vengeance for settling and scoring personal vendetta. A torch which is lighted to dispel darkness cannot be permitted to set on fire its surroundings.

7. Applied mechanically and blindly, Section 18 of the Act would virtually tantamount to abdicating and relegating the judicial duty of considering at least the question whether the allegations taken on their face value constitute an offence under the Act.

8. The words '*accusation of having committed the offence under this Act*' are the guiding words of Section 18 of the Act.

9. The word 'accuse' means 'a claim that someone has done something wrong'. Thus, an accusation is complete if it

has all the ingredients required by law for a claim that someone has done something wrong.

10. Various clauses of Section 3 of the Act enumerate the offences created by the Act. Thus, a person can properly be said to be accused of an offence under the Act if the allegations read as they are evidence that the ingredients of the offence are made out. A statement of fact which does not make out the ingredients of the offence would be an accusation 'improperly so called'.

11. Thus, it is apparent that the bar created by Section 18 of the Act would not apply merely because an FIR has been registered under the Act. It would always remain within the domain and the jurisdiction of the Court to judicially consider whether the allegations in the FIR prima facie make out an offence under the Act and if it is found so, only then can it be said that there is an accusation of having committed the offence under the Act.

12. As clarified by the Full Bench of the Rajasthan High Court, while entertaining and considering an application seeking anticipatory bail, the jurisdiction of the Court would be limited to read the allegations in the complaint and satisfy itself whether or not the allegations disclose the commission of an offence under the said Act. If it is found to be so, the bar created by

Section 18 of the Act would apply. If not, the bar would not apply. We concur with the reasoning of the decision of the Full Bench of the Rajasthan High Court in Virender Singh's case (supra) and extract the same so that our decision is properly supplanted. The same reads as under:-

“18. In the matter of State of M.P. v. R.K.Balothia (supra), although the consideration was only in regard to the challenge to the constitutional validity of the Act of 1989 and Section 18 of the said Act in particular while dealing with the same, the arguments which have been advanced by some of the counsel in this reference regarding extent of the scrutiny of material and maintainability of the application also impliedly under consideration and although the Apex Court expressly did not enter into the question as to what extent the Courts would enter into scrutiny of material, the tone and tenor of the entire judgment is more than a pointer to the inference that once a person is accused of an offence under Sec.3 of the Act of 1989, his remedy seeking anticipatory bail is completely barred and as observed in the matter of Rakesh's case (1995 Raj Cri C 329) (supra) by the Apex Court in Cr. Appeal No.640/96 dated 7-5-1996 the Courts would not be justified in entertaining the application for anticipatory bail once an offence under the Act of 1989 is disclosed in the FIR. In view of the ratio of these two judgments, there is no scope left for this Full Bench to enter into the question regarding the extent and scope of interpretation of Sec.18 of the Act of 1989 on the ground of curtailment of personal liberty for once a person is accused of an offence and a case is registered against him under the Act of 1989, the Court of Session and the High Court in view of the clear bar of Sec.18 of the Act of 1989, the Court of Session and the High Court in view of the clear bar of Sec. 18 of the Act of 1989 would clearly be precluded from entering into the enquiry of the allegations leveled against the accused and we find substance in the contention that if the Courts are permitted to enter into a roving enquiry in regard to the allegations, the

whole purpose and effect of the section would be totally defused and would make it totally otiose and redundant. This is also the ratio which is clearly reflected from the case of State of M.P. v. R.K. Balothia (1995 Cri L J 2076) referred to hereinbefore as in the said case, the same set of arguments were advanced that if the courts are precluded from entering into the enquiry into the allegations there would be complete negation of the right to liberty envisaged in the Constitution. We are afraid that if an interpretation of Sec.18 is made in a manner so as to permit scrutiny of materials into the case-diary, charge-sheet, statements of the witnesses and other materials on record, it would be difficult to make a distinction between usual application for anticipatory bail and the one filed in a case alleged against an accused under the Act of 1989. It has to be borne in mind that if a person is even alleged of accusation of committing an offence under the S.C. S.T. Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Sec.3 has been applied to implicate a person for an offence under the Act of 1989 the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Sec.3 of the Act of 1989 and once the ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise in our view is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Sec.18 of the Act of 1989, which is apparent from the perusal of the section itself and thus the Court at the most would be required to evaluate the FIR itself with a view to find out if the

facts emerging there from taken at their face value disclose the existence of the ingredients constituting the alleged offence. In our opinion, the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or the complaint by calling for the case diary, charge sheet or any other material gathered at the time of investigation but, if the allegations in the FIR or the complaint even if they are taken at their face value are accepted in their entirety do not constitute the offence alleged, it is only in those miniscule number of cases, the Courts would be justified in entertaining the application, not because it is maintainable but clearly because the Act would be inapplicable in the facts and circumstances of that particular case. Thus the application for anticipatory bail can be entertained only on the ground of inapplicability of the Act of 1989 due to the facts of the case which will have to be gathered only from the FIR and not beyond that because once it is gathered from the FIR that the applicant is an accused of committing an offence laid down under Sec.3 of the Act of 1989, the bar of Sec.18 would instantly operate against the person who has been made an accused of the offence under the Act of 1989. To put it differently, once it is apparent from the FIR that an offence under the Act of 1989 is even alleged, the Courts would not be justified at all in weighing or scrutinizing the preponderance of the probability of commission of the offence by the accused, but if from the FIR itself the ingredients of offences as laid down under Sec.3 of the Act itself is found to be missing, the bar created by Sec.18 would not be allowed to operate against an accused and only in that event his application for anticipatory bail would be dealt with by the concerned Court to determine whether the Act of 1989 can be said to be rightly applicable against the accused and not to enter into further inquiry into the matter so as to determine whether the allegations leveled against the accused in the FIR are true or false and there would be no justification to enter into the matter further in order to examine whether the allegations leveled against the accused are even prima facie correct or incorrect. Any other interpretation, in our opinion, would go against the

letter and spirit of the clear provisions of Sec.18 of the Act of 1989 which has already stood the test of reasonableness and constitutional validity upto the level of the Apex Court.”

13. We dispose of the reference holding that the bar created by Section 18 of the Act is not absolute but is circumscribed by the ratio of law as laid down in para 18 in Virender Singh's case (supra).

14. The reference is answered accordingly.

15. No further orders are required on the bail application filed by the petitioner seeking anticipatory bail for the reason the appellant has been admitted to regular bail by the learned Trial Judge.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 18, 2009

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